

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

11/07/22

04:59 PM

K2211007

Appeal Of Constellation NewEnergy, Inc.
From Citation No. E-4195-0130 Issued By
Consumer Protection And Enforcement
Division

K. 22-11-____

**APPEAL OF CONSTELLATION NEWENERGY, INC.
FROM CITATION NO. E-4195-0130 ISSUED BY
CONSUMER PROTECTION AND ENFORCEMENT DIVISION**

Andrew B. Brown
Jessica Melms
Ellison Schneider Harris & Donlan LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
E-Mail: abb@eslawfirm.com
jmelms@eslawfirm.com

November 7, 2022

Attorneys for Constellation NewEnergy, Inc.

TABLE OF CONTENTS

I. Background.....	2
II. Timeline and CPUC Filing Guidance	3
III. Improper Application of the Rule	7
IV. Conclusion	8
Exhibits A – I	
Attachment 1	

TABLE OF AUTHORITIES

Cases

<i>General Electric Co. v. EPA</i> (D.C. Cir. 1995) 53 F.3d 1324	5
<i>Landgraf v. USI Film Products</i> (1994) 511 U.S. 244	5
<i>Myers v. Philip Morris</i> (2002) 28 Cal. 4th 828.....	5

Orders and Rulings of the California Public Utilities Commission

Resolution E-4195	2, 5, 7, 9
-------------------------	------------

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Appeal Of Constellation NewEnergy, Inc.
From Citation No. E-4195-0130 Issued By
Consumer Protection And Enforcement
Division

K. 22-11-____

**APPEAL OF CONSTELLATION NEWENERGY, INC.
FROM CITATION NO. E-4195-0130 ISSUED BY
CONSUMER PROTECTION AND ENFORCEMENT DIVISION**

Pursuant to the instructions provided with Citation No. E-4195-0130 (“Citation”)¹ issued by the California Public Utilities Commission’s (“Commission” or “CPUC”) Consumer Protection and Utilities Enforcement Division (“Enforcement Division”) to Constellation NewEnergy Inc. (“CNE”) on October 7, 2022, in the amount of \$28,000, CNE hereby submits this Notice of Appeal of the Citation based upon the grounds outlined herein. As described further below, the Citation should be dismissed on this appeal because (i) CNE properly and timely submitted the required Month Ahead Load Forecast with the CPUC, (ii) CNE discovered and corrected its error of failing to provide the Month Ahead Load Forecast to the California Energy Commission (“CEC”) and California Independent System Operator (“CAISO”), (iii) outside of the instance that is the subject of this appeal, CNE has not previously made a similar error, (iv) no harm resulted from CNE’s error to reliability or the CPUC’s management of the RA program, and (v) there was at the time of CNE’s error a “backstop” mechanism in place for the CPUC to forward the required Month Ahead Load Forecast to the CEC and CAISO to account for the exact circumstance that occurred here where the LSE failed to provide the

¹ Citation for Violation of Resource Adequacy (“RA”) reporting Requirements Under Resolution E-4195 , (as Modified by Decisions (“D.”)10-06-036, D.11-06-050, D.19-06-026, D.20-06-031, and D.21-06-029), issued Oct. 7, 2022.

information directly to the CEC and CAISO. In light of these facts and because “the issuance of a citation for a specified violation is not mandatory,”² imposition of the Citation is unnecessary to ensure future compliance and inappropriate for the circumstances of this case. Accordingly, the CPUC should dismiss the Citation on appeal.

I. BACKGROUND

On October 7, 2022, the CPUC issued the Citation to CNE for failing to submit its September-December 2022 Month Ahead Adjusted Load Forecast at the time and manner required.

The Citation states that 75 days prior to the compliance month, CNE was required to submit their Month Ahead Load Forecast adjustment with the CPUC, the CEC and CAISO. This date fell on June 17, 2022.

CNE properly and timely submitted the required Month Ahead Load Forecast adjustment with the CPUC via the secured FTP server (Kiteworks), as instructed in the 2022 CPUC RA Filing Guide. However, due to an administrative oversight, CNE failed to also submit the relevant Month Ahead Load Forecast adjustment to the CEC and CAISO at that time. On July 19, 2022, CNE discovered and corrected the omission by submitting the relevant Month Ahead Load Forecast adjustment to the CEC and CAISO. However, the CPUC RA Filing Guide in effect at the time (as opposed to a revised version that recently became effective for the 2023 compliance year) made clear that this exact scenario would not create an informational gap because, “in the event that an LSE fails – or is unwilling – to submit the filings via email to the

² Resolution E-4195, OP 2, Appendix A, pages 8, 13.

CEC and CAISO, Energy Division will forward all files to the CEC and CAISO *at COB on the filing due date.*³

II. TIMELINE AND CPUC FILING GUIDANCE

At page 2, the Citation lays out the alleged violation's timeline, including:

- On June 15, 2022, CPUC Energy Division ("ED") staff emailed LSEs, including CNE, a reminder that the August 2022 Month Ahead ("MA") Compliance Filing and September to December 2022 MA Load Forecast Compliance Filing were due on June 17, 2022, and that LSEs were required to submit load forecast adjustments to both the CPUC and the CEC.
- On June 17, 2022, the CPUC received CNE's September to December 2022 MA Load Forecast adjustment.
- On July 19, 2022, CEC staff informed ED staff that it did not receive a September to December 2022 MA Load Forecast adjustment from CNE.
- On July 19, 2022, ED staff e-mailed CNE a reminder to file its September to December 2022 MA Load Forecast adjustment with the CEC.
- On July 19, 2022, CNE filed its September to December 2022 MA Load Forecast adjustment with the CEC.
- On September 1, 2022, Utilities Enforcement Branch ("UEB") staff requested confirmation from CNE regarding when CNE filed its September to December 2022 MA Load Forecast adjustment with the CEC.
- CNE responded on the same day, (September 1, 2022) confirming CNE filed its September to December 2022 MA Load Forecast adjustment with the CEC on July 19, 2022.

Although CNE's review of relevant materials, including emails and proof of service documents, is consistent with aspects of the CPUC's timeline above, the CPUC's description does not include certain key facts. CNE describes the timeline and details more fully below and includes relevant exhibits herein:

³ 2022 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings, issued October 18, 2021 ("2022 RA Filing Guide") at page 46, posted at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/resource-adequacy-compliance-materials/final-2022-ra-guide-clean-101821.pdf> (emphasis added). Among other things, the 2022 RA Filing Guide discusses the potential for unforeseen events and the legal reasons a load-serving entity ("LSE") may not wish to send confidential files to the CEC and CAISO via normal, unsecured email and provided for that contingency by committing to forward the relevant files to the CEC and CAISO on the submission due date.

- On June 15, 2022, at 2:51pm, CPUC ED staff emailed LSEs, including CNE, a reminder that the August 2022 MA Compliance Filing and September to December 2022 MA Load Forecast Compliance Filing are due on June 17, 2022, and that LSEs are required to submit its load forecast adjustment for customer migrations to the CPUC, CAISO and the CEC. (Exhibit A)
- On June 17, 2022, at 12:49pm, CNE timely filed their August Month-Ahead System Resource Adequacy (“MARA”) Compliance Submission to the CPUC RA Filing team via the Commission’s secure FTP server, which included the required September to December 2022 MA Load Forecast adjustments. (Exhibit B)
- On June 17, 2022, at 4:56pm, CNE received notification that the CPUC staff had downloaded all submitted RA Compliance documents. (Exhibit C)
- On June 18, 2022, at 12:01am, CNE received notification that the CPUC staff had again downloaded the August MARA and September to December 2022 MA Load Forecast adjustment spreadsheets. (Exhibit D)
 - After properly filing with the CPUC via the secure FTP server, neither the CPUC, CEC, nor CAISO contacted CNE at any time to submit any missing information.
- On July 19, 2022, at 1:31pm, CNE, on its own initiative, contacted the CEC and CAISO RA teams and provided the August 2022 MARA compliance filings including the September to December 2022 MA Load Forecast adjustments to ensure a complete record of the filing going to each of the relevant entities.
 - CNE decided to directly provide this information to the CEC and CAISO on July 19, 2022, to ensure that the CEC and CAISO also had the filing in their possession, despite the clarity of the language in the 2022 RA Filing Guide that the CPUC should have already forwarded the filing to the CEC and CAISO because CNE had not done so by the filing due date. (Exhibit E)
- On July 19, 2022, at 4:11pm, after CNE had submitted the relevant data to the CEC and CAISO, CPUC staff emailed CNE and stated, “[p]lease make sure to send your load forecast update to the CEC as well in the future.” (Exhibit F)
- On September 1, 2022, at 2:30pm, the UEB contacted CNE to determine whether they filed the September to December 2022 Load Forecast adjustments to the CEC on June 17, 2022. (Exhibit G)
- On September 1, 2022, at 5:09pm, CNE responded to the UEB’s email alerting them of the surrounding circumstances and the 2022 RA Filing Guide’s provision that, in the event an LSE fails to submit filings to the CEC and CAISO, the Energy Division will forward all filed documents to the CEC and CAISO by close of business on the filing due date. (Exhibit H)

The RA citation program was initiated by Resolution E-4195, modified by the decisions specified in footnote 1 above, and is implemented through the RA Filing Guide. According to the CPUC, “in demonstrating compliance with the CPUC’s RA program ... LSEs are to use this

[RA Filing] Guide as reference material.”⁴ The RA Filing Guide is updated annually by Energy Division after a consultation cycle with stakeholders. Updates to the RA Filing Guide cannot be applied retroactively, in particular, as the basis for imposing a penalty for the violation of a rule change.⁵ As described in the timeline above and in the Citation, the applicable RA Filing Guide when the alleged violation occurred was the 2022 Filing Guide. This version was issued on October 18, 2021 and stayed in effect until it was updated in the normal course for the next RA compliance year on September 30, 2022.⁶

The entirety of the alleged violation occurred while the 2022 RA Filing Guide was in effect. These dates include the filing submission date of June 17, 2022, the Citation’s allegation of the submission error on June 17, 2022, and the date CNE provided the filing to the CEC and CAISO on July 19, 2022.

The 2022 RA Filing Guide provides:

LSEs must submit files directly to the Energy Division via the Secure FTP application and must submit the filings to the CEC and CAISO using the email addresses below. (Note that the Additional Local Resources (2022 and 2023) tab in the Year Ahead Local and

⁴ 2022 RA Filing Guide at 3.

⁵ “As we said more than 50 years ago, a retroactive or retrospective law “is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.” *Myers v. Philip Morris* (2002) 28 Cal. 4th 828, 839. As the U.S. Supreme Court has reiterated, “[t]he presumption against statutory retroactivity is founded upon elementary considerations of fairness dictating that individuals should have an opportunity to know what the law is and to conform their conduct accordingly. It is deeply rooted in this Court’s jurisprudence and finds expression in several constitutional provision.” *Landgraf v. USI Film Products* (1994) 511 U.S. 244, 245. “Due process requires that parties receive fair notice before being deprived of property. ... In the absence of notice -- for example, where the regulation is not sufficiently clear to warn a party about what is expected of it -- an agency may not deprive a party of property by imposing civil or criminal liability. ... [A]s long ago as 1968, we recognized this “fair notice” requirement in the civil administrative context. ... This requirement has now been thoroughly “incorporated into administrative law.” *General Electric Co. v. EPA* (D.C. Cir. 1995) 53 F.3d 1324, 1328-1329.

⁶ See, “2023 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings”, issued September 29, 2022, posted at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/resource-adequacy-compliance-materials/final-2023-ra-guide-clean-93022.pdf>

Flexible Template need only be submitted to the CPUC.) In the event that an LSE fails – or is unwilling – to submit the filings via email to the CEC and CAISO, Energy Division will forward all files to the CEC and CAISO at COB on the filing due date.⁷

As noted above, and in the attached emails, CNE timely submitted to the CPUC the required load forecast adjustments via the secure FTP. But there is no information on whether the CPUC subsequently provided the materials to the CEC and CAISO by close of business on the filing due date as clearly contemplated in the 2022 RA Filing Guide. CNE later sent the material to the CEC and CAISO. The Citation omits any reference to the 2022 RA Filing Guide provision regarding the CPUC’s role in forwarding the submitted materials to the CEC and CAISO, despite CNE highlighting this provision to UEB on September 1, 2022, as shown in Exhibit H.

This omission is material and negates the basis for asserting violation in this specific case as the 2022 RA Filing Guide acknowledges that there are circumstances in which an LSE may not submit filings to the CEC and CAISO and – critical here – that such instances are to be addressed and remedied by the CPUC “forward[ing] all files to the CEC and CAISO at COB on the filing due date.”

Also critical to evaluating the significance of the 2022 RA Filing Guide language described above is the fact it was later changed – *prospectively* – to remove the procedure for the CPUC to “forward all files” to the CEC and CAISO. This change was not addressed in the Citation. This specific provision found in the 2022 RA Filing Guide has been part of the CPUC’s RA Filing Guides since the 2010 edition (Exhibit I). After the alleged violation occurred, the 2023 RA Filing Guide was revised to expand the notification clause and deleted the

⁷ 2022 RA Filing Guide, page 46.

provision regarding the CPUC forwarding the submissions to the CEC and CAISO if the LSE does not.⁸

Had the 2023 RA Filing Guide been in effect at the time of the events at issue, CNE could not have relied on the procedure for the CPUC to “forward materials” to the CEC and CAISO. However, the 2023 RA Filing Guide was not in effect. Attempting to apply the requirements of the 2023 RA Filing Guide to CNE retroactively for events that occurred in 2022 under a prior version of the RA Filing Guide is improper.

III. IMPROPER APPLICATION OF THE RULE

Moreover, the UEB has improperly expanded the penalty provision of Resolution E-4195 to apply to the MARA load forecast updates as opposed to the proper application which is only applicable to the submission of non-adjusted load forecasts.

Specifically, the Citation states that:

Resolution E-4195, as modified by D.10-06-036, D.11-06-022, D.14-06-050, D.19-06-026, D.20-06-031, and D.21-06-029, specifies that the penalty for failure to file a Preliminary/Adjusted Load Forecast at the time or in the manner required is \$1,000.00 per incident plus \$500.00 per day for the first ten days the filing was late and \$1,000.00 for each day thereafter

citing Resolution E-4195, Ordering Paragraph (“OP”) 2, Appendix A, pp. 6, 13. UEB misstates the OP. A review of this cited provision shows no mention of a specified penalty or scheduled violation for adjusted load forecasts, only preliminary load forecasts. Adjusted load forecasts and preliminary load forecasts are two different types of forecasts that have vastly different meanings and uses, and the adjusted information only addresses customer migrations, not

⁸ 2023 RA Filing Guide, page 51.

changes in customers' consumption patterns which is provided with the annual preliminary load forecasts.⁹

Based on the Citation's language, which does not match the Commission's adopted Resolution or its Appendix, the UEB has improperly conflated the two terms in an attempt to punish CNE for an oversight that was (1) contemplated and resolved for under the terms of the 2022 RA Filing Guide in effect at the time of the submission, and (2) for a data submission type not contemplated within the RA penalty matrix cited by the UEB.

IV. CONCLUSION

To summarize, the Citation should be dismissed on this appeal. On June 17, 2022, CNE timely submitted its MARA compliance filing via the secure FTP server, as contemplated by the terms of the 2022 RA Filing Guide. To the extent an LSE such as CNE did not provide the filing to the CEC (as CNE inadvertently did not do here), the clear implication and remedy under the 2022 RA Filing Guide in effect at the time (and not the 2023 version that took effect later) was for the CPUC to "forward [the] materials" to the CEC. When the UEB contacted CNE on September 1, 2022 regarding this matter, and CNE provided information regarding the oversight and the language of the 2022 RA Filing Guide, the next substantive action to the RA Filing Guide was the removal of that provision for the final 2023 RA Filing Guide just prior to UEB serving CNE with the Citation. The UEB has also omitted certain key information relating to the Citation timeline implying that the CPUC identified CNE's filing omission on July 19, 2022, when in fact CNE—on its own initiative—contacted the CEC and CAISO to ensure a record of the proper filing was received by all the relevant entities. The UEB has also misapplied the

⁹ See 2022 RA Filing Guide, page 6 for date of the 2022 Year-Ahead Load Forecast submission and revision opportunities. See pages 13-17 regarding filing of adjusted load forecasts reflecting only load migration since the year-ahead forecast for quarterly CAM and periodic RAR or CPM allocations. See page 33 for discussion on the primary load forecast development processes.

language in the applicable enforcement resolution, effectively extending the penalty to the monthly adjustments to load forecasts for customer migrations as opposed to the annual preliminary load forecast used by the CEC and CPUC to establish RA procurement obligations. Further, upon receiving notice of CNE curing its oversight by forwarding the materials to the CEC and CAISO, the CPUC staff acknowledged this communication when it stated “[p]lease make sure to send your load forecast update to the CEC as well in the future.” (Emphasis added.) This message from the CPUC included no discussion of an error that would be subject to penalty on CNE’s part, nor did it acknowledge that the CPUC had not provided the materials to the CEC as contemplated in the applicable RA Filing Guide.

In light of Resolution E-4195’s statement that “the issuance of a citation for a specified violation is not mandatory,”¹⁰ and because alleged error was both contemplated and accounted for by the 2022 RA Filing Guide, and thus not subject to a sanction, and self-identified and corrected by CNE, CNE respectfully requests that the Citation be dismissed by this appeal.

DATED: November 7, 2022

Respectfully submitted,

/s/

Andrew B. Brown
Jessica Melms
Ellison Schneider Harris & Donlan LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
E-Mail: abb@eslawfirm.com
jmelms@eslawfirm.com

Attorneys for Constellation NewEnergy, Inc.

¹⁰ Resolution E-4195, OP 2, Appendix A, pages 8, 13.

Exhibit A: June 15, 2022, 2:51pm, reminder email from CPUC ED staff to LSEs, regarding due date for August 2022 MA Compliance Filing and September to December 2022 MA Load Forecast Compliance Filing.

Eric Janssen

From: Ng, Emma <Emma.Ng@cpuc.ca.gov>
Sent: Wednesday, June 15, 2022 2:51 PM
To: info@3phasesrenewables.com; ndepasquale@3PhasesRenewables.com; mmazur@3phasesRenewables.com; Brian@pacificea.com; drobertson@applevalley.org; Barbara@BayshoreCGI.com; Dona@pacificea.com; Brian@pacificea.com; tsmith@ces-ltd.com; tsmoker@ces-ltd.com; Alex.Hersch@commercialenergy.net; jfarbstein@ces-ltd.com; mday@downeybrand.com; Ron.Perry@commercialenergy.net; Curry.Stypula@commercialenergy.net; Jesse.Adamski@Constellation.com; Edward.J.Mackay@constellation.com; Andy Brown; Eric Janssen; bryan.wright@constellation.com; CPACC@calpine.com; william.stokes@calpine.com; katiejorrie@dwt.com; patrickferguson@dwt.com; ttardif@cleanpoweralliance.org; mlanger@cleanpoweralliance.org; nkeefe@cleanpoweralliance.org; rviebrock@cleanpoweralliance.org; dmcneil@cleanpoweralliance.org; gihle@cleanpoweralliance.org; nbaerlocher@cleanpoweralliance.org; rabueg@sfwater.org; RHCheuk@sfwater.org; skjones@sfwater.org; srivers@sfwater.org; PowerRegulatory@sfwater.org; mhyams@sfwater.org; akragarnold@sfwater.org; kbarrows@cvag.org; jharr@teainc.org; rbelgram@teainc.org; bwynn@teainc.org; dfreedman@cvag.org; ebarnwell@cvag.org; Ryan.harwell@directenergy.com; Jay.Robertson@directenergy.com; Kristine.herbert@directenergy.com; Addisyn.Ulbrich@directenergy.com; Taylor.Roye@nrg.com; ken.goeke@ncpa.com; Tony.Zimmer@ncpa.com; jdorrance@ebce.org; hchang@ebce.org; Mike.Whitney@ncpa.com; klee@ebce.org; todd.schneck@edfenergyna.com; Deborah.Merril@edftrading.com; Cherie.Fuller@edfenergyna.com; Christine.Hughey@edfenergyna.com; EDF_CAISO_Supply@edfenergyna.com; regulatory@pilotpowergroup.com; sadams@kingcity.com; Brian@pacificea.com; blaising@braunlegal.com; kwells@cityoflancasterca.org; jcaudle@cityoflancasterca.org; jclark@mbcommunitypower.org; tom.habashi@mbcommunitypower.org; ddyconeal@mbcommunitypower.org; dthomas@acespower.com; mthomas@acespower.com; ryanj@acespower.com; grahamb@acespower.com; caisora@acespower.com; msasaki@acespower.com; jharris@acespower.com; asingh@3ce.org; rbelgram@teainc.org; jharr@teainc.org; bwynn@teainc.org; salcaraz@teainc.org; Brian@pacificea.com; dweisz@mcecleanenergy.org; dona@pacificea.com; tnordquist@mcecleanenergy.org; compliance@mcecleanenergy.org; greg.bass@calpinesolutions.com; bryan.white@calpinesolutions.com; Drake.welch@calpinesolutions.com; brian@pacificea.com; john@pacificea.com; barbara@bayshorecgi.com; kwells@cityofpalmdale.org; blucha@cityofpalmdale.org; sdoherty@peninsulacleanenergy.com; jpepper@peninsulacleanenergy.com; ckeys@peninsulacleanenergy.com; dthomas@acespower.com; ryanj@acespower.com; mthomas@acespower.com; wreilly@acespower.com; msasaki@acespower.com; jharris@acespower.com; schen@peninsulacleanenergy.com; GxZ5@pge.com; QXY1@pge.com; S1C1@pge.com; RSGa@pge.com; JPGN@pge.com; BECF@pge.com; mop4@pge.com; aelb@pge.com; Brian@pacificea.com; dona@pacificea.com; Don.Eckert@PioneerCommunityEnergy.ca.gov; SamK@PioneerCommunityEnergy.ca.gov; brian@pacificea.com; dona@pacificea.com; barbara@bayshorecgi.com; Chris_Diggs@ci.pomona.ca.us; julie_carver@ci.pomona.ca.us; James_Makshanoff@ci.pomona.ca.us; regulatory@pilotpowergroup.com; cmartin@pilotpowergroup.com; brian@pacificea.com; dona@pacificea.com; acooper@pico-rivera.org; kFuentes@pico-rivera.org; rengel@redwoodenergy.org; jgwynn@redwoodenergy.org;

To: sstewart@teainc.org; bwynn@teainc.org; cmateer@redwoodenergy.org; compliance@redwoodenergy.org; rbelgram@teainc.org; Brian@pacificea.com; dona@pacificea.com; isaiah@RanchoMirageCA.gov; Christopher.Porras@sce.com; Angelica.Sindelar@sce.com; selene.willis@sce.com; Magesh.Srinivasan@sce.com; eric.lavik@sce.com; Eduardo.Martinez@sce.com; Hongyan.Sheng@sce.com; Kaladhar.R.Bollampalli@sce.com; William.V.Walsh@sce.com; john@pacificea.com; kirby@pacificea.com; bvosburg@sdcommunitypower.org; Brian@Pacificea.com; trading@sdcommunitypower.org; kburns@sdcommunitypower.org; jpasquito@semprautilities.com; AKarazuba@sdge.com; KNGersze@sdge.com; EdelLlanos@sdge.com; kschiernmeyer@sdge.com; Marcie.Milner@shell.com; lisa.strain@shell.com; mike.davis@shell.com; Ken.Ueng@shell.com; Howard.Chiu@shell.com; tony.zimmer@ncpa.com; roxana.khayyam@ncpa.com; jeanne.sole@sanjoseca.gov; Mike.Whitney@ncpa.com; Paul.Innamorato@sanjoseca.gov; Brian@pacificea.com; dona@pacificea.com; TPrill@sanjacintoca.gov; rjohnson@sanjacintoca.gov; demerson@sonomacleanpower.org; belder@eq-research.com; mkoszalka@sonomacleanpower.org; chakstian@sonomacleanpower.org; Tony.Zimmer@ncpa.com; Mike.Whitney@ncpa.com; monica.padilla@svcleanenergy.org; thomas.messier@svcleanenergy.org; girish@svcleanenergy.org; dthomas@acespower.com; jharris@acespower.com; ryanj@acespower.com; msasaki@acespower.com; mthomas@acespower.com; dzvareck@acespower.com; charles.grinstead@svcleanenergy.org; Electricity@TigerNaturalGas.Com; klatt@energyattorney.com; lori@tigernaturalgas.com; jburris@tigernaturalgas.com; Cynthia.Clark@ucop.edu; rbelgram@teainc.org; bwynn@teainc.org; ccaenergyservices@smud.org; larry.chen@smud.org; bill.her@smud.org; George.Vaughn@valleycleanenergy.org; brian@pacificea.com; dona@pacificea.com; aparenteau@santabarbaraca.gov; brian@ocpower.org; bprobolsky@ocpower.org; john@pacificea.com; kirby@pacificea.com; tlaw@ocpower.org; stoops@braunlegal.com

Cc: RAfiling

Subject: Reminder email - August 2022 MA RA Filings due 6/17/2022

Attachments: LSE Legend.xlsx

Dear LSE:

This is a courtesy reminder that your August 2022 Month Ahead RA filings with Local and Flex trueup are due on 6/17/2022. In addition, load forecast updates for September to December 2022 are due to the CEC and the CPUC on 6/17/2022.

Note: LSEs are required to submit their load forecast to the CPUC as well as CEC. Failure to submit a load forecast or late submission of load forecast to the CPUC or CEC could result in referral to CPED for potential enforcement actions. If you do not have any load migration update, please send an email to RAfiling@cpuc.ca.gov and the CEC indicating so.

Standard Subject Line and File Name for RA filing

For month ahead RA filings submitted to the CPUC, please use the subject line "<LSE ID> <Month> <Year> MA RA Filing". If there are revisions, add "Version 2", "Version 3" and so on at the end of the subject line. For example, ACME April 2022 MA RA Filing.

Per the 2022 RA Guide, please use the following naming convention when submitting compliance filings to the CPUC, CEC, and CAISO: "<1-10 character name of LSE><first three letters of month>MA22". For example, ACMEAprMA22. Please use the attached CPUC LSE ID.

In addition, please do not alter the structure of the template by adding or deleting rows and columns.

Unspecified (Non-Resource-Specific) and Resource-Specific Imports

Pursuant to D.20-06-28, OP 6, if your month ahead RA filing includes unspecified imports, please do the following:

- Provide the full unredacted version of the RA contract(s).
- For any unspecified import resource for which you provided a contract in a previous filing – and for which the contract has not been amended since that earlier filing and remain in effect – you may reference the contract rather than submitting it again. In your cover letter, please reference the date you previously submitted the contract. In addition, please include the following language in cell B19 of the “Certification” tab in your filing:
***“Unspecified Import Documentation:** I certify that I have reviewed the documentation relating to unspecified imports that we previously submitted and to which we refer in our cover letter for this filing, and I have verified that the contract(s) to which we refer are still active and applicable and have not been cancelled or amended in any way.”*

Pursuant to D.20-06-028, OP 1, a resource specific imports will count towards RA requirement if it is (a) Pseudo-Ties and Dynamically Scheduled into CAISO's day-ahead and real-time markets, and (b) LSEs provide a resource-specific resource ID in its RA filing that is listed on a matching CAISO supply plan and on the Commission's Net Qualifying Capacity list. Energy Division included a list of resource specific imports (Pseudo-Ties and Dynamically Scheduled System Resources) in the NQC list posted on the CPUC website at [Resource Adequacy Compliance Materials \(ca.gov\)](https://www.cpuc.ca.gov/ResourceAdequacyComplianceMaterials).

Pursuant to D.20-06-028, OP 8, an attestation may be used to demonstrate compliance in certain circumstances.

Energy Division will review the documentation provided to determine whether a particular unspecified import resource meets the requirements of D.20-06-028 and D.21-06-029. Energy Division may also require additional documentation in order to make necessary determinations.

MA Local Waiver ALs: If an LSE's YA local waiver is pending, the LSE still needs to submit MA local waiver ALs. If an LSE's YA local waiver is granted, the LSE does not need to submit MA local waiver ALs through the June 2022 compliance month. Starting with the July 2022 compliance month, if the LSE has an incremental local deficiency due to the incremental local trueup, the LSE will need to file MA local waiver ALs. If you are submitting a local waiver Advice Letter, please send it to ED Tariff Unit as well as the service list.

If you have not already submitted your filings, please ensure they are properly submitted through the Secure File Transfer before End of Business Day 6/17/2022 for the August 2022 RA filing with Local and Flex trueup and September to December 2022 load forecast.

Please access the Secure File Transfer site by going to the following website address:
cpucftp.cpuc.ca.gov

Thank you.

Exhibit B: June 17, 2022, 12:49pm, SFTP submission receipt for CNE's August MARA
Compliance Submission to CPUC.

Eric Janssen

From: ftpadmin@cpuc.ca.gov
Sent: Friday, June 17, 2022 12:49 PM
To: rafiling@cpuc.ca.gov
Subject: Constellation NewEnergy, Inc. August Month Ahead RA Compliance Submission - CONFIDENTIAL



ericj@eslawfirm.com sent you a secure message

[Access message](#)

Dear RA Team, attached please find Constellation NewEnergy, Inc.'s August 2022 month ahead RA compliance filing, September 2022 load forecast adjustment, a completed Specified Imports Template, signed certifications for each filing, and a cover letter discussing this submission. Please reach out should you have any questions. Thanks, - eric.

Eric Janssen | Paralegal | Ellison Schneider Harris & Donlan LLP
O: (916) 447-2166 | M: (916) 813-9102 | E: ericj@eslawfirm.com

Secured by **Kiteworks**

 Attachments expire on Aug 16, 2022



4 PDFs

CNE Aug2022 RA Cover Letter (220617) (00579105xBA8E1).pdf,
CNE_SEP_MonthAheadLoadForecast_signed Cert (00579048xBA8E1).pdf, Executed
CNE_AugMA22_signature (00579049xBA8E1).pdf, MSCG_CNE_2022 Firm Energy_ImportRA
Contract (with SC Services)_03.08.2022_CONFIDENTIAL (00579003-2xBA8E1).pdf



2 spreadsheets

CNEAugMA22 (00579001xBA8E1).xlsx, CNE_SEP_MonthAheadLoadForecast
(00579000xBA8E1).xlsx

This message requires that you sign in to access the message and any file attachments.

Exhibit C: June 17, 2022, 4:55pm, email notification that the CPUC staff downloaded all submitted RA Compliance documents.

Eric Janssen


From: ftpadmin@cpuc.ca.gov
Sent: Friday, June 17, 2022 4:55 PM
To: Eric Janssen
Subject: Download notification: rafiling@cpuc.ca.gov downloaded 6 files



rafiling@cpuc.ca.gov downloaded 6 files

Access message

Secured by **Kiteworks**

 Downloaded on Jun 17, 2022 23:55:26 (GMT)



4 PDFs

CNE Aug2022 RA Cover Letter (220617) (00579105xBA8E1).pdf,
CNE_SEP_MonthAheadLoadForecast_signed Cert (00579048xBA8E1).pdf, Executed
CNE_AugMA22_signature (00579049xBA8E1).pdf, MSCG_CNE_2022 Firm Energy_ImportRA
Contract (with SC Services)_03.08.2022_CONFIDENTIAL (00579003-2xBA8E1).pdf



2 spreadsheets

CNEAugMA22 (00579001xBA8E1).xlsx, CNE_SEP_MonthAheadLoadForecast
(00579000xBA8E1).xlsx

This message requires that you sign in to access the message and any file attachments.

Exhibit D: June 18, 2022, 12:01am, email notification that the CPUC staff again downloaded all submitted RA Compliance documents.

Eric Janssen


From: ftpadmin@cpuc.ca.gov
Sent: Saturday, June 18, 2022 12:01 AM
To: Eric Janssen
Subject: Download notification: rafiling@cpuc.ca.gov downloaded 1 file



rafiling@cpuc.ca.gov downloaded 1 file

Access message

Secured by **Kiteworks**

 Downloaded on Jun 18, 2022 7:00:39 (GMT)



1 spreadsheet

CNEAugMA22 (00579001xBA8E1).xlsx

This message requires that you sign in to access the message and any file attachments.

Eric Janssen


From: ftpadmin@cpuc.ca.gov
Sent: Saturday, June 18, 2022 12:01 AM
To: Eric Janssen
Subject: Download notification: rafiling@cpuc.ca.gov downloaded 1 file



rafiling@cpuc.ca.gov downloaded 1 file

[Access message](#)

Secured by **Kiteworks**

 Downloaded on Jun 18, 2022 7:00:40 (GMT)



1 spreadsheet

CNE_SEP_MonthAheadLoadForecast (00579000xBA8E1).xlsx

This message requires that you sign in to access the message and any file attachments.

Exhibit E: July 19, 2022, 1:31pm, email from Eric Janssen, paralegal at Ellison Schneider Harris & Donlan LLP, attorneys for CNE, providing the August 2022 MARA compliance filings including the September to December 2022 Load Forecast adjustments to CEC and CAISO.

Eric Janssen

From: Eric Janssen
Sent: Tuesday, July 19, 2022 1:31 PM
To: 'rafiling@energy.ca.gov'; 'reliabilityrequirements@caiso.com'
Cc: Andy Brown
Subject: Constellation NewEnergy, Inc. RA Compliance for August 2022 - CONFIDENTIAL
Attachments: CNE Aug RA.ZIP

Dear CEC and CAISO RA Teams, as I was reviewing my sent emails with respect to Resource Adequacy compliance submissions, I could not find an email where I sent the August 2022 month ahead RA compliance filing to you. Out of an abundance of caution and to ensure my and your records are complete, I am sending that submission to you now. Please let me know if you have any questions. Very truly yours, -Eric Janssen

From: Eric Janssen
Sent: Tuesday, July 19, 2022 1:14 PM
To: 'rafiling@energy.ca.gov' <rafiling@energy.ca.gov>; 'reliabilityrequirements@caiso.com' <reliabilityrequirements@caiso.com>
Cc: Andy Brown <abb@eslawfirm.com>
Subject: Constellation NewEnergy, Inc. RA Compliance for September 2022 - CONFIDENTIAL

CONFIDENTIAL ATTACHMENTS

Dear CEC and CAISO RA Teams, attached please find a zip file containing Constellation NewEnergy, Inc.'s (CNE) Confidential September 2022 month ahead RA compliance filing, October 2022 load forecast adjustment, the September 2022 Imports template, supporting documentation, signed certifications for each filing, and a cover letter discussing this submission. This submission was provided to the CPUC yesterday via its SFTP server.

Thanks, -eric.

Eric Janssen
Paralegal



2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
O: (916) 447-2166
M: (916) 813-9102
<mailto:ericj@eslawfirm.com>
www.eslawfirm.com

CONFIDENTIALITY NOTICE: This communication and any accompanying document(s) may be confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Moreover, any such inadvertent disclosure shall not compromise or waive the attorney-client privilege as to this communication or otherwise. If you have received this communication in error, please contact the sender at the internet address indicated or by telephone at (916)447-2166, delete this e-mail and destroy all copies. Thank you.

Exhibit F: July 19, 2022, 4:11pm, CPUC staff email reminder to CNE.

Eric Janssen

From: Chow, Lily <lily.chow@cpuc.ca.gov>
Sent: Tuesday, July 19, 2022 4:11 PM
To: Eric Janssen; RAfiling
Subject: RE: Constellation NewEnergy, Inc. August Month Ahead RA Compliance Submission - CONFIDENTIAL

CNE:

Please make sure to send your load forecast update to the CEC as well in the future.

Lily

From: ftpadmin@cpuc.ca.gov <ftpadmin@cpuc.ca.gov>
Sent: Friday, June 17, 2022 12:49 PM
To: RAfiling <rafiling@cpuc.ca.gov>
Subject: Constellation NewEnergy, Inc. August Month Ahead RA Compliance Submission - CONFIDENTIAL




ericj@eslawfirm.com sent you a secure message

[Access message](#)

Dear RA Team, attached please find Constellation NewEnergy, Inc.'s August 2022 month ahead RA compliance filing, September 2022 load forecast adjustment, a completed Specified Imports Template, signed certifications for each filing, and a cover letter discussing this submission. Please reach out should you have any questions. Thanks, - eric.

Eric Janssen | Paralegal | Ellison Schneider Harris & Donlan LLP
O: (916) 447-2166 | M: (916) 813-9102 | E: ericj@eslawfirm.com

Secured by **Kiteworks**

 Attachments expire on Aug 16, 2022



4 PDFs

CNE Aug2022 RA Cover Letter (220617) (00579105xBA8E1).pdf,
CNE_SEP_MonthAheadLoadForecast_signed Cert (00579048xBA8E1).pdf, Executed
CNE_AugMA22_signature (00579049xBA8E1).pdf, MSCG_CNE_2022 Firm Energy_ImportRA
Contract (with SC Services)_03.08.2022_CONFIDENTIAL (00579003-2xBA8E1).pdf



2 spreadsheets

CNEAugMA22 (00579001xBA8E1).xlsx, CNE_SEP_MonthAheadLoadForecast
(00579000xBA8E1).xlsx

This message requires that you sign in to access the message and any file attachments.

Exhibit G: September 1, 2022, 2:30pm, UEB email to CNE.

Eric Janssen

From: Christo, Nathan <nathan.christo@cpuc.ca.gov>
Sent: Thursday, September 1, 2022 2:30 PM
To: Eric Janssen
Subject: CNE September to December 2022 Month Ahead Load Forecast

Mr. Janssen,

Greetings. Constellation NewEnergy filed its September to December 2022 Month Ahead load forecast on Friday, June 17, 2022 with the California Public Utilities Commission. Did Constellation NewEnergy also file this load forecast with the California Energy Commission? If so, can you please provide a copy of the e-mail containing the load forecast sent to the California Energy Commission.

Please contact me with any questions.

Regards,

Nate Christo
Senior Investigator/Regulatory Analyst
415 703 1069
Utility Enforcement Branch
Consumer Protection and Enforcement Division
Badge # 30

Exhibit H: September 1, 2022, 5:09pm, CNE email response to the UEB's 9/1/2022 email.

Eric Janssen

From: Eric Janssen
Sent: Thursday, September 1, 2022 5:09 PM
To: 'Christo, Nathan'
Cc: Andy Brown; Lucia, Seth T:(Constellation)
Subject: RE: CNE September to December 2022 Month Ahead Load Forecast
Attachments: Constellation NewEnergy, Inc. RA Compliance for August 2022 - CONFIDENTIAL

Dear Mr. Christo,

Attached please find the July 19, 2022 email in which I sent the September to December 2022 Load Forecast Adjustment to the CEC. As the email notes, as I was reviewing my sent emails with respect to Resource Adequacy compliance filings, I was unable to find an email to the CEC and CAISO for the August 2022 month's compliance filing. After making this discovery on my own, I promptly forwarded the materials to the CEC and CAISO. Additionally, neither Andy Brown (my supervising attorney), myself, nor CNE were contacted by the CEC or CAISO as to that submission.

As you are likely aware, I cannot send the RA compliance filings using the Commission's SFTP server to non-CPUC addresses such as the CEC and CAISO. Previously in the RA Program, the CPUC Staff would forward the filings to the CEC and CAISO, but that courtesy was suspended in recent years, despite the current RA Guide stating that Energy Division would indeed do so:

"LSEs must submit files directly to the Energy Division via the Secure FTP application and must submit the filings to the CEC and CAISO using the email addresses below. (Note that the Additional Local Resources (2022 and 2023) tab in the Year Ahead Local and Flexible Template need only be submitted to the CPUC.) In the event that an LSE fails – or is unwilling – to submit the filings via email to the CEC and CAISO, Energy Division will forward all files to the CEC and CAISO at COB on the filing due date." RA Guide at 46.

Please let me know if you have any questions. Thanks, -Eric.

Eric Janssen
Paralegal



2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
O: (916) 447-2166
C: (916) 813-9102
<mailto:ericj@eslawfirm.com>
www.eslawfirm.com

From: Christo, Nathan <nathan.christo@cpuc.ca.gov>
Sent: Thursday, September 1, 2022 2:30 PM
To: Eric Janssen <ericj@eslawfirm.com>
Subject: CNE September to December 2022 Month Ahead Load Forecast

Mr. Janssen,

Greetings. Constellation NewEnergy filed its September to December 2022 Month Ahead load forecast on Friday, June 17, 2022 with the California Public Utilities Commission. Did Constellation NewEnergy also file this load forecast with the California Energy Commission? If so, can you please provide a copy of the e-mail containing the load forecast sent to the California Energy Commission.

Please contact me with any questions.

Regards,

Nate Christo
Senior Investigator/Regulatory Analyst
415 703 1069
Utility Enforcement Branch
Consumer Protection and Enforcement Division
Badge # 30

Exhibit I: Excerpt from CPUC's 2010 RA Filing Guide.

2010 Filing Guide for System and Local Resource Adequacy (RA) Compliance Filings

1. Purpose and Overview of RA Guides and Templates.....	1
2. New for RA 2010 Compliance Year.....	1
3. Major components of the RA templates	2
4. Energy Auction and the Capacity Allocation Mechanism.....	3
5. The Filing Process and the Local RAR.....	3
6. Local RA True up Process for 2010 Compliance Year	5
7. Confidentiality and RA Filings	7
8. Export Commitments made with RA Resources	8
9. Load Forecast Adjustments.....	9
10. Standard Capacity Product CAISO Tariff	10
11. Net Qualifying Capacity	10
12. Maximum Cumulative Capacity and Resource Categories	11
13. Demand Response (DR) Resources	12
14. Outages.....	13
15. Allocation of Reliability Must Run (RMR) Units for Local and System RAR.....	14
16. Import Capacity Allocation Process for 2010.....	16
17. Zonal RA: Constraint on Flows Across Path 26	19
18. Department of Water Resources (DWR) Contracts.....	20
19. Firm Import Liquidated Damages (LD) Contracts	21
20. RA Portfolio Resources.....	21
21. Certification of LSE Resource Adequacy Compliance Filing.....	21
22. Submission of RA Filings – Secure FTP	21
23. Correction of Errors: Minor or Substantial	23
Appendix A: Submission of RA Compliance Filings	24
Appendix B: CAISO Import Allocation Process for 2010.....	26
Appendix C: Frequently asked questions and clarifications to the filing instructions.....	27
Appendix D: Directions for use of Secure FTP.....	30

Pursuant to section 4.4 of D. 08-06-031, Energy Division has elected to require LSEs to file electronically for RA Filings covering 2010 compliance year. Appendices A and D direct LSEs in electronic submission of RA Filings for 2010 Compliance Year. LSEs are encouraged to contact Energy Division immediately for any questions or issues relating to the Secure FTP application. LSEs may need to reregister periodically, as the Secure FTP system may purge users after a period of inactivity. Additionally, in the case of unforeseen system failures, Energy Division will notify LSEs with alternate arrangements.

In light of the electronic nature of the submissions, LSEs are required to use the following naming convention when submitting compliance filings to the CPUC, CEC, and CAISO as follows:

[1-10 character name of LSE][first three letters of month or LOC for Year Ahead Local][YA for year ahead, or MA for month ahead][last 2 digits of the year][.xls]. For example, ACMELSE's Year Ahead template for August 2010 would be named as follows: ACMELSEAugYA09.xls. Filenames are not case sensitive.

LSEs will use the Secure FTP client available at the url below to transmit the following three files: https://cpucftp.cpuc.ca.gov/courier/1000@/mail_user_login.html?

1. Completed workbooks covering the applicable compliance months; Month Ahead System RA Filings cover the next compliance month, while Year Ahead System RA Filings cover the summer months of May through September and the Local RA Filing covers all months of 2010.
2. A pdf of the signed certification sheet or an electronic signature in the certification page of the template.
3. Confidentiality Declaration covering the filing or reference in the cover letter and Summary Sheet to the date and content of the original confidentiality declaration meant to cover the filing.

Directions for use of the Secure FTP are attached to this guide as Appendix D. LSEs are to submit files directly to the Energy Division via the Secure FTP application, and are requested to submit the filings via email to the CEC and CAISO at the email addresses below. In the event that an LSE fails to do so or is unwilling to submit the filings via email to the CEC and CAISO, Energy Division will forward all files to the CEC and CAISO at COB on the filing due date.

CPUC Energy Division email: RAFiling@cpuc.ca.gov	California Energy Commission email: RAFiling@energy.state.ca.us	CAISO email: reliabilityrequirements@caiso.com
---	---	--

Attachment 1: Citation Appeal Form

STATE OF CALIFORNIA

GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

☐ I hereby state that I will comply with Citation No. E-4195-0130 dated October 7, 2022, and herewith pay a fine in the amount of \$28,000.

- Please make check payable to the California Public Utilities Commission and send, along with a copy of this form, to:

CALIFORNIA PUBLIC UTILITIES COMMISSION
Fiscal Office
505 Van Ness Ave., Room 3000 San
Francisco, CA 94102

- Please PDF a copy of this form to Nate Christo at [Nathan.Christo@cpuc.ca.gov].
- You may direct all questions regarding this citation to Nathan Christo at [415- 703-1069] or [Nathan.Christo@cpuc.ca.gov].

I hereby acknowledge that if I do not appeal the citation, and do not pay the full amount within 30 days, any unpaid balance shall accrue interest at the legal rate of interest for judgments, and Commission Staff and the Commission may take action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

☒ I hereby appeal Citation No. E-4195-0130, dated September 7, 2022.

- To appeal this citation, follow the directions described in this citation, and described in detail in Appendix A of Resolution ALJ-377 (both attached herein).
- Please PDF a copy of this form to Donovan Tan at [Nathan.Christo@cpuc.ca.gov].

Signature: _____



Name and Title: Andrew B. Brown, Attorney

Name of Company: Ellison Schneider Harris & Donlan LLP on behalf of Constellation NewEnergy, Inc.

Citation No.: E-4195-0130

Date: November 7, 2022